CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

REGISTERED MAIL

Little League Baseball Canada
235 Dale Avenue
Ottawa ON K1G 0H6

Attention: Mr. Roy Bergerman, President

BN: 11945 7364 RR0001

File #:0495424

January 12, 2009

Subject: **Revocation of Registration**
Little League Baseball Canada

Dear Mr. Bergerman:

The purpose of this letter is to inform you that a notice revoking the registration of Little League Baseball Canada (the "Association") was published in the *Canada Gazette* on January 10, 2009. Effective on that date, the Association ceased to be a registered Canadian amateur athletic association (RCAAA).

Consequences of Revocation:

a) The Association is no longer exempt from Part I Tax as an RCAAA and **is no longer permitted to issue official donation receipts.** This means that gifts made to the Association are no longer allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *Income Tax Act* (the Act), respectively.

b) The *Excise Tax Act* (hereinafter, the ETA) defines a "charity" in subsection 123(1) as "a registered charity or registered Canadian amateur athletic association within the meaning assigned to those expressions by subsection 248(1) of the Act, but does not include a public institution". Therefore, under the ETA an RCAAA is referred to as a "charity". The Association will no longer qualify as a charity for purposes of subsection 123(1) of the ETA, effective the date of revocation. As a result, it may be subject to obligations

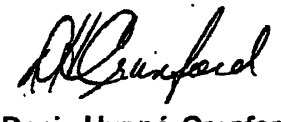
and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

In accordance with *Income Tax Regulation* 5800, the Association is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the Association's effective date of revocation.

Finally, we wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a *Return of Income* with the Minister of National Revenue (the "Minister") in prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,



Danie Huppé-Cranford
Director
Compliance Division
Charities Directorate
Telephone: 613-957-8682
Toll-free: 1-800-267-2384

Enclosures

- Canada Gazette publication

cc: Gowling Lafleur Henderson LLP, Barristers & Sollicitors, Suite 1600, 100 King St. West, Toronto ON M5X 1G5, [redacted]

CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

REGISTERED MAIL

Little League Baseball Canada
235 Dale Avenue
Ottawa, ON, K1G 0H6

OCT 0 1 2008

BN: 11945 7364 RR0001
File #: 0495424

Attention: Mr. Roy Bergerman, President

Subject: Notice of Intention to Revoke
Little League Baseball Canada

Dear Mr. Bergerman:

I am writing further to our letter dated June 18, 2008 (copy enclosed), in which your organization was invited to submit representations as to why the Minister of National Revenue (the "Minister") should not revoke the registration of the Little League Baseball Canada (the "RCAAA") in accordance with subsection 168(1) of the *Income Tax Act* (the "*ITA*").

We have now reviewed and considered your written response dated August 15, 2008. However, notwithstanding your reply, our concerns with respect to the RCAAA's non-compliance with the requirements of the *ITA* for registration as an RCAAA have not been alleviated. Our position is fully described in Appendix "A" attached.

Consequently, for the reasons mentioned herein and in our letter dated June 18, 2008 , I wish to advise you that, pursuant to the authority granted to the Minister in 168(1)(d) and 168(1)(e) of the *ITA*, which has been delegated to me, I propose to revoke the registration of the RCAAA. By virtue of subsection 168(2) of the *ITA*, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

> *For issuing more than $82 million in donation receipts for abusive transactions that, in the opinion of the Minister, do not qualify as gifts, and for failing to maintain proper books and records, both grounds arising from its role as a participant in a tax shelter arrangement, notice is hereby given, pursuant to paragraphs 168(1)(d) and 168(1)(e) of the* Income Tax Act, *that I propose to revoke the registration of the organization listed below. In accordance with subsection* 168(2) *of the* Income Tax Act, *the*

revocation of registration is effective on the date of publication of this notice.

Business Number	**Name**
11945 7364 RR 0001	Little League Baseball Canada Ottawa, Ontario

This notice will be published in the Canada Gazette upon the expiration of 30 days from the mailing of this letter.

Consequences of Revocation:

As of the effective date of revocation the RCAAA **will no longer be permitted to issue official donation receipts.** This means that gifts made to the RCAAA would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *ITA*, respectively.

If you have any questions regarding this matter please contact Mr. Blaine Langdon, A/Manager, Compliance Division at (613) 946-2400.

Yours sincerely,

Terry de March
Director General
Charities Directorate

Attachments:

- Appendix "A", Comments on representations of August 15, 2008
- Appendix "B", Flow of Funds
- CRA letter dated June 18, 2008
    - Appendix "A", Tax Shelter/Scheme Description
    - Appendix "B", 2004 Donation Program

APPENDIX "A"

Little League Baseball Canada (LLBC)

RCAAA Audit for the fiscal period
October 1, 2004 to September 31, 2006

COMMENTS ON REPRESENTATIONS OF August 15, 2008

Seriousness of Non-Compliance:

As described in the balance of this appendix, and in our letter of February 22, 2008, it is the position of the Canada Revenue Agency (the "CRA") that Little League Baseball Canada (LLBC) is in serious breach of the requirements of registration under the *Income Tax Act* (the "ITA") and its registration should be revoked.

Our audit has revealed that LLBC has issued official donation receipts for $ 82,965,552, yet retained a mere $ 1,092,566 of the cash contributed. Our audit has concluded that the remainder of the funds flowed through LLBC's accounts to an offshore investment account, to give the illusion that they were received and held by LLBC, but these were, in fact, immediately used to repay the Lenders. These facts, in our view, demonstrate that LLBC has participated in and facilitated an abusive tax shelter arrangement which, in our view, is ground for revocation in and of itself.

Issuance of Official Donation Receipts:

We have reviewed your response of August 15, 2008, and remain of the view that during the audit period LLBC has issued receipts for gifts or donations otherwise than in accordance with the ITA and the regulations.

An RCAAA is entitled, under the ITA, to issue receipts for gifts that it receives. However, before an RCAAA can issue a tax receipt, it is incumbent on the RCAAA to determine whether the transaction qualifies as a "gift" at law. An RCAAA, which issues a receipt for a transaction which does not qualify as a gift at law, can be revoked under paragraph 168(1)(d) of the ITA.

a) No *Animus Donandi*

It remains the view of the CRA that the vast majority of the transactions involving the RCAAA do not qualify as gifts as they lack the requisite *animus donandi* – or "intent to give" – that a donor transfer property to an RCAAA and impoverish him or herself as a result. Participants in these arrangements fully intend to recoup the full amount of their "donation" plus an additional 67-94% return through a series of pre-meditated and artificial transactions.

In your letter you assert that from the RCAAA's perspective, the organization simply issued receipts for funds it received from the donors and that the advantage that is received from a tax credit or deduction is not considered a benefit citing Paradis v. R, [1997] 2 C.T.C. 2557 (T.C.C.), Doubini v. R., [2004] 3 C.T.C. 2297 (T.C.C), and Friedberg v. R. (1991), 92 D.T.C. 6031 (fed. C.A.) as jurisprudence supporting the organization's actions.

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We do not dispute the definition of a gift as cited in Friedberg v. R. (1991), 92 D.T.C. 6031 (fed. C.A.); however, we would also refer you to McPherson v. the Queen (2006), TCC 648 a current case relating to a tax shelter arrangement. At paragraph 21, the Honourable Justice L.M. Little cites: The Queen v. Burns, 88 DTC 6101 Mr. Justice Pinard said at page 6105:

> "I would like to emphasize that one essential element of a gift is an intentional element that the Roman law identified as animus donandi or liberal intent (see Mazeaud, Lecon de Droit Civil, tome 4ième, 2ième volume, 4ième edition, No. 1325, page 554). The donor must be aware that he will not receive any compensation other than pure moral benefit; he must be willing to grow poorer for the benefit of the donee without receiving any such compensation."

We would also draw your attention to the comments of Justice Bowie in Webb v. The Queen (2004) UDTC 148

> "[16] Much has been written on the subject of charitable donations over the years. The law, however, is in my view quite clear. I am bound by the decision of the Federal Court of Appeal in The Queen v. Friedberg, among others. These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative."
>
> "[17] The circumstances that I have referred to lead me to conclude that there was nothing donative at all about Mr. Webb's payment to ABLE. His intention was to receive a tax credit for a charitable donation, as well as a substantial refund of the amount he had given, such that when the two were aggregated they would exceed the $30,000 for which he wrote the cheque."
>
> "[18] I was referred in argument to the recent decision of Madam Justice Campbell in Doubinin v. The Queen and her statement in the first sentence of paragraph 18 where she said:
>
> > He is not part of a tax evasion scheme, and although he may have been motivated by potential tax benefits, I do not believe that this can be equated to consideration for a gift because tax benefits are not considered a benefit. ..."
>
> "I do not read Madam Justice Campbell as purporting there to extend what was said by Mr. Justice Linden in Friedberg to suggest that a scheme entered into whereby a person would be put in a position to claim tax credits for charitable donations in excess of the donations actually made, by the issuing of false receipts or by the kickback of part of the donation, to be a normal transaction and something that would not be considered a benefit within the context of the definition of what constitutes a gift."

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As above, and *per* our previous letter, the arrangement which LLBC participated in promised donors a positive return on investments by making donations. The arrangement promised participants the opportunity to achieve this by receiving loans that, through a series of related "investments" and the purchase of an "insurance policy", would not need to be repaid. LLBC knew that the donors were receiving receipts valued at almost four times the amount actually contributed out-of-pocket. It is clear that the scheme in which LLBC participated was mass-marketed as an opportunity to profit from the tax system by making an out-of-pocket payment and receiving a non-repayable loan – with LLBC issuing a receipt for both amounts.

In your letter, you allege that LLBC had no knowledge of any assurances or guarantees given to the borrowers that the loans would never be repaid; however, LLBC was in possession of documents that clearly outline the program as presented to donors whereby the donor directed funds to Specialty Insurance Ltd to establish an investment contract and insurance policy, which together would generate sufficient funds to re-pay the loan in 10 years. As outlined in our previous letter, the rates of return that would need to be achieved on a sustained basis were clearly "ambitious", particularly when compared to the low rates of return the tax shelter was providing to LLBC on its own investments.

It is acknowledged that the money for which LLBC issued receipts flowed through its bank accounts. However, as our audit has revealed, these funds were required to be transferred offshore to conceal the ultimate use of these funds – that these funds were used to repay the Lenders. Despite the representations made by the promoters of the tax shelter arrangement, who were engaged by LLBC to fundraise on its behalf, it is clear that the loans were not repaid by the investment contracts and specialty insurance, but were repaid out of the donations to LLBC. As such, we remain of the view that these transactions lack the requisite *animus donandi* to be considered gifts as the donors did not give gratuitously but knew they were to receive "loans" that through a series of artificial transactions they were not liable to repay.

We would note that LLBC is fully aware of this arrangement and is an active participant in these schemes. LLBC has produced material used for promotional purposes by the promoters of these arrangements. LLBC pays fees to the promoters of these arrangements as referral fees. Through the method these schemes are promoted and its own participation in these arrangements LLBC knew, or ought to have known, the means by which this was promoted and what was represented to donors. LLBC knew, or ought to have known, how its own participation in this arrangement facilitated this abusive arrangement – by agreeing to issue receipts for 100% of an amount transferred to it, while agreeing to transfer 99% of the donation to an offshore account it had no access or ownership over. As such, the receipts issued by LLBC were clearly not in respect of valid gifts as the funds received were essentially "kicked back" to repay loans on behalf of donors. Whether or not we are to believe LLBC was ignorant of these transactions, this is simply not an acceptable defense. LLBC's conduct is clearly designed to facilitate this scheme and it has taken no prudent actions to verify the authenticity of the transactions to which they have lent their tax receipting privileges to.

As such, it remains our view that the RCAAA issued receipts for transactions that do not qualify as gifts at law. For this reason alone it remains our view that LLBC has issued receipts other than in accordance with the ITA and there are grounds for revocation of its registered status under paragraph 168(1)(d).

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(b) Receipts were issued for property that was not donated to LLBC

It is worth noting that, upon drawing LLBC's attention to the fact that the funds which are represented as belonging to LLBC as investments were in fact repaid to the Lender, that the only response provided by LLBC was to disavow knowledge of these transactions. *Per* our previous letter, the lack of care and concern LLBC has demonstrated towards the $82.9 million purportedly donated to it is alarming in and of itself.

In your letter you indicate that LLBC did not transfer any of the donated funds to the Lender and simply issued receipts. In our view, LLBC's conduct in this arrangement is clearly unacceptable and designed to facilitate these transactions – whether or not LLBC was, in fact, itself directly involved in the transfer of the funds back to the Lender. LLBC issued receipts for in excess of $82.9 million in donations. It was entitled to retain a meagre 1% of these amounts. LLBC, for its part in the arrangement, agreed and did, in fact, transfer 99% of all donations to an offshore account in Bermuda to which it had no access. It is from this account that funds were returned to the Lender (see Appendix "B" for an example of one transaction).

Per our previous letter, LLBC took no steps to safeguard its property and understood it would receive only 1% of the total "donated". It is telling that despite the care LLBC takes in safeguarding its own investments, pursuing a modest investment strategy, with respect to the $82.9 million received through the tax shelter arrangements, the RCAAA relinquished all control and direction over these funds to an offshore entity. Despite receiving a meagre .32% rate of return on these "investments" and a steadily eroding principle amount, the RCAAA continued to participate in this program. As noted in our previous letter, LLBC was required by a predetermined series of transactions to transfer 99% of all "receipted" funds to an account held by Trafalgar Trading Limited (TTL) in return for a potential income stream with no recourse or rights to those funds.

It is clear that, despite the fact that the money flowed through LLBC's account, the RCAAA understood that it was only entitled to keep 1% of the total donations. Our audit has concluded that the funds purportedly held offshore on behalf of LLBC have substantially all been repaid to the Lender and other related parties. It is our position that LLBC has issued receipts for property which was not donated to it for use in its programs but, as part of its participation in this program, was required to be sent offshore, and was subsequently repaid to the Lenders. In our view, the RCAAA's conduct has been structured to accommodate these transactions – either knowingly or through wilful blindness. Given the lack of due diligence LLBC has demonstrated in safeguarding the $82.9 million in funds for which LLBC has issued official tax receipts, it is simply not an acceptable defence for LLBC to deny knowledge of the circular and abusive transactions in which the RCAAA has participated.

As such, it remains our view that the RCAAA issued receipts for abusive transactions not actually donated to the RCAAA, but designed to give the illusion that property has been donated to the RCAAA. For this reason alone it remains our view that LLBC issued receipts other than in accordance with the ITA and there are grounds for revocation of its registered status under paragraph 168(1)(d).

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(c) Receipts not issued for full value of the property donated

Although this was raised in the initial letter, we are not relying on it as grounds for revocation. However, we remain alarmed by the fact that the RCAAA would enter into an arrangement where it was required to issue a receipt for 100% of an amount but, as part of its arrangement with the tax shelter promoters gave up access and rights to $82.9 million in funds in return for 1% of the full amount and a percentage of the income to be generated by the investment over a period of 20 years.

Our audit has concluded that even if we were to accept that the funds received by LLBC were actually placed in offshore investments, which we do not, in our view this is further evidence that the funds were never beneficially owned by LLBC during the period under audit. Further, LLBC's return on investment was a meagre .32% and the average loss on capital would have been 8.3% annually.

It is also equally clear from LLBC's own Financial Statements that it understood that the funds collected by the promoters were not for its use, but instead 99% of the funds were to be placed into "investments" which would generate royalty payments over a period of 20 years.

(d) Receipts included amounts that represented limited recourse debt

It is the position of the CRA that LLBC participated in a tax shelter arrangement, which was structured as a limited recourse debt as defined in proposed section 143.2(6.1). We bring to your attention proposed subsection 143.2(6.1) as defined in the 2006 Department of Finance Technical notes:

> "A limited recourse debt includes the unpaid principal of any indebtedness for which recourse is limited, even if that limitation applies only in the future or contingently. It also includes any other indebtedness of the taxpayer, related to the gift or contribution, if there is a guarantee, security or similar indemnity or covenant in respect of that or any other indebtedness. For example, if a donor (or any other person mentioned below) enters into a contract of insurance whereby all or part of a debt will be paid upon the occurrence of either certain or contingent event, the debt is a limited recourse debt in respect of a gift if it is in any way related to the gift. Such indebtedness is also a limited-recourse debt if it is owned by a person dealing non-arm's length with the taxpayer or by a person who holds an interest in the taxpayer."

In your letter you state: "As part of its due diligence process, the Board of Directors of LLBC sought and obtained a legal opinion regarding compliance of the donation program with the Act. Although, the opinion obtained by Mr. Sefcik was in keeping with that of the Parklane Financial Group from [redacted] which stated that the loan would not be a limited recourse debt providing that the interest on the loan was paid when due." However, we would note that LLBC was also in possession of a contrasting opinion, written by [redacted], stating that the loans granted to the donors would likely be considered to be a limited-recourse loan. Furthermore, it is clear LLBC was fully aware of CRA's position and concerns regarding gifting trust arrangements – even expressing internally numerous doubts as to the legality of the program in which LLBC was participating. It is regrettable that LLBC chose to ignore these latter pieces of information and the numerous warning signs in favour of continued participation.

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For the reasons expressed in our previous letter, the CRA remains of the view that the amounts received by the RCAAA are amounts which meet the definition of a limited-recourse debt. It is clear that the debts offered to the donors were, as represented by the promoters[1], an unpaid amount for which there was a "guarantee, security, or similar indemnity or covenant" in respect of the indebtedness. As noted above, in an example of proposed subsection 248(32), the option of a donor to satisfy or pay a loan by assigning or transferring to another person a property **(including the rights under an insurance policy)** that has less economic value than the amount of loan outstanding would reduce the amount of the gift.

For this reason alone it remains our view that LLBC has issued receipts other than in accordance with the ITA and there are grounds for revocation of its registered status under paragraph 168(1)(d).

Books and Records

The audit revealed the RCAAA did not have adequate books and records per paragraphs 230(2)(a) and (c) of the ITA.

In your letter you stated: "the donations did appear on LLBC's bank statements and, as evidenced by the attached financial statements, were reflected in the financial statements of LLBC every year." Our audit revealed the bank statements you referenced were not included in the General Ledger ("GL") and were therefore off balance sheet accounts. Consequently, it was impossible to trace the amounts deposited from the bank statements to the GL, which is a standard audit procedure to prove the completeness assertion of the financial statements. Furthermore, as indicated in our letter dated June 18, 2008, the 2006 financial statements and the information return did not reflect the true donation receipted amount ($35,197,800 and $16,185,010 respectively). A $7,552,500 gift in kind amount was not included in these returns. The audit revealed that, in fact, $42,750,400 was receipted in 2006.

Upon review of the amended T2052 and the revised financial statements, we have noted a discrepancy of $7,552,500 still exists between the two documents. Note 7 of the financial statements regarding the Trafalgar donations still stated $35,197,800 as the amount received. With respect to the revised financial statements dated August 3, 2007, supplied with your letter of August 15, 2008, no revisions could be detected from the original document received by the CRA on January 26, 2007.

In our letter dated June 18, 2007, we informed you of a $2,001,300 discrepancy between the receipted amount by LLBC and the bank deposit analysis performed. In your letter of August 15, 2008, you stated: "LLBC has compared the aggregate amount of donation receipts issued by LLBC against the aggregate amount of donations reported to the CRA and the aggregate amount of the Trafargar/Parklane donations received according to its bank statements." We refer you to the following table for greater detail regarding our findings:

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[1] In this section we are considering the loans as they were represented. As above, our audit has concluded the amounts were in fact repaid on behalf of the donors using the same funds purportedly donated to LLBC.

Program		Amount Received
2003 (Oct) - Equigenesis	$	1,100,000
2003 (Nov) - Equigenesis	$	10,068,150
2003 - Series A	$	75,000
2004 - Series A	$	13,012,498
2004 - Series B	$	15,208,767
2005 - Series A	$	32,680,300
2005 - Series B	$	2,752,137
2006 - Series A	$	16,140,700
	$	91,037,552
Less amount receipted in 2007	$	6,070,800
	$	84,966,752

Amount Traced to Bank account		Deposits traced to Bank
Fiscal 2003	$	1,100,000
Fiscal 2004	$	11,858,992
Fiscal 2005	$	27,256,160
Fiscal 2006	$	42,750,400
	$	82,965,552
Variance	$	2,001,200

With respect to the donation in kind of $7,552,500, your letter indicated an amended T2052 was filed with CRA and that revised notes to the 2006 financial statements account for this omission. As previously stated, the revised August 3, 2007, financial statements still indicate only $35,197,800, which is contrary to your statement. As well, there is no record the CRA had received an amended T2052 prior to the attached copy in your reply.

As such, it remains our view LLBC has failed to provide adequate books and records as required under the ITA and that there are grounds for revocation of its registered status under paragraph 168(1)(e).

Additional Arguments

LLBC's submissions raise a number of additional arguments against the revocation of their status. Specifically, the RCAAA notes that the donation program in which it has participated has provided much needed funding (approximately $300,000 of income annually) and that revocation of registration would be detrimental to the sport of baseball. However, we would note that most of this annual income is derived from the meagre 1% retained by LLBC, as described above.

The ITA provides RCAAAs with the unique privilege of issuing tax receipts, which a donor can claim on his or her tax return, on the presumption that where funds are donated, the RCAAA actually receives and actually uses an equivalent amount in their programs. In the case at hand, our audit has concluded that LLBC has issued in excess of $82.9 million in donation receipts on behalf of an abusive arrangement in which leveraged donations were flowed through the account of the RCAAA, to an offshore account and immediately returned to the Lender. LLBC was entitled to retain a meagre 1% of all donations that it received upfront and

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received .32% *per annum* from its "investments"[2].

In its letter, LLBC suggests "the financial crisis faced by many RCAAAs is what leads to the proliferation of the various donation programs." In our view, this fact is simply not a defence for the issuance of $82.9 million in official donation receipts in return for a 1% commission. We would draw your attention that the "$300,000 in annual funding", which cumulatively amounted to $1,092,566 during the years reviewed, pales in comparison to the fact that the tax receipts issued by LLBC represent a loss to Canadians of approximately $24 million dollars in forgone federal tax alone.

While it is regrettable that the RCAAA has chosen to participate in an abusive program, in our view the conduct of LLBC is too serious to consider its continued registration under the ITA.

[2] Since the vast majority of funds sent offshore were immediately repaid to the Lender with commissions to related parties, these amounts can logically only have been paid out of the left-over donor cash.

CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

REGISTERED MAIL

Little League Baseball Canada
235 Dale Avenue
Ottawa, ON, K1G 0H6

BN: 119457364 RR0001
File #: 0495424

Attention: Mr. Joe Shea, president

June 18, 2008

Subject: Audit of the Little League Baseball Canada

Dear Mr. Shea:

This letter is further to the audit of the books and records of the Little League Baseball Canada ("LLBC") by the Canada Revenue Agency (the "CRA"). The audit related to the operations of the registered Canadian amateur athletic association (the "RCAAA") for the period from October 1, 2004 to September 30, 2006.

The CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the "ITA") or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	**Reference**
1.	Issuing official donation receipts other than in accordance with the Income Tax Act or its regulations	ITA 168(1)(d)
2.	T2052 Information Return/ Book and Records	230(2)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of our audit as they relate to the legislative provisions applicable to RCAAAs and to provide LLBC with the opportunity to address our concerns. In order for a RCAAA to retain its registration, it is required to comply with the provisions of the ITA and common law applicable to RCAAAs. If these provisions are not complied with, the Minister of National Revenue may revoke LLBC's registration in the manner prescribed in section 168 of the ITA.

The balance of this letter describes the findings of the audit in further detail.

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Summary: Participation in Various Tax Shelter Gifting Arrangements

The audit revealed that, during the periods under review, LLBC participated in the following tax shelters/donation arrangements:

- Trafalgar Donations Program – 2003 Series A
- Equigenesis – 2003 Series B
- Trafalgar Donations Program – 2004 Series A
- Equigenesis – 2004 Series B
- Trafalgar Donations Program – Parklane –2005 Series A
- Trafalgar Donations Program – Parklane –2006 Series A
- Trafalgar Donations Program – Parklane –2007 Series A

While participation in tax shelter gifting arrangements is not prohibited by the ITA *per se*, the CRA is extremely concerned that LLBC may be facilitating an abusive arrangement by agreeing to issue tax receipts on behalf of arrangements for "property" LLBC flows through its bank accounts, but is only entitled to keep 1%. Our audit revealed that LLBC issued receipts for a total receipted amount of $82,965,552[1] while it actually received a meagre $1,092,566. The remainder of the funds are transferred by LLBC to off-shore "investments" purportedly held on behalf of the RCAAA. As described below, our audit has revealed that these investments do not exist and that the funds are immediately repaid to the original lenders. Accordingly, it is our view that, through its participation in each of these programs, LLBC has issued receipts otherwise than in accordance with the ITA and its regulations.

Overview - Donations Program – Parklane – 2004 and 2005

As we understand from the materials obtained during the course of the audit, the Parklane program in which LLBC participated was marketed as follows. We have provided a more detailed appendix of the typical transactions involved in this scheme at Appendix B:

Using a hypothetical $10,000 "donation" as an example, a participant in this tax shelter arrangement would only be required to personally contribute $2,790. The participant would subsequently "borrow" $11,200 from a pre-arranged lender - Plaza Capital Finance Corp. (the "Lender"). These amounts, a total of $13,990, are held by an escrow agent in trust on the donors' behalf prior to orders from LLBC for disbursement.

The loans secured by participants bear interest at the rate of 3% and have a ten-year term. Interest must be paid within 60 days of December 31st, each year.

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[1] $1,100,000 in 2003, $11,858,992 in 2004, $27,256,160 in 2005 and $42,750,400 in 2006

Each participant directs the escrow agent to deposit $10,000 of the $13,990 held in trust in a [redacted] account in LLBC's name. For a 10,000 donation, LLBC would be required to direct the [redacted] to transfer $9,900 to Trafalgar Trading Limited pursuant to a Royalty Agreement, which entitled the Association from 60% to 80% of any monthly profits based on the year and type of Royalty Agreement and at which point a fee of approximately $600 is transferred to Parklane Financial Group from Trafalgar Trading Limited. Each of these transactions would occur within a 24-hour period. As such, for a $10,000 "donation", LLBC would only receive $100 of cash that is freely at its disposal. It is important to note that per the CRA audit only $1,092,566 (1.32%) has been earned for $82,965,552 in receipts with an average annual loss of 8.3% (1.24% for Series A and 20.04% for series B) on the capital investment. Based on this rate of return, LLBC will receive a total of $2,418,471 for the investments over a 20-year period and the capital would erode to $41,402,135 for a net loss of $ 41,563,417.

Given the facts as known by CRA, the "net loss" is substantially more due to the facts of the arrangement noted below whereby only a maximum of $159.80 per $1000 receipt for all series A programs (see appendix B) is, in fact, potentially invested. Based on these figures, the actual capital after 20 years would likely only be $929,278 for a net loss of $ 82,036,274.

The participant directs the escrow agent to pay $336 to the Lender in payment of the first year's interest on the loan.

The participant also directs the escrow agent to remit the remaining $3,654 to Specialty Insurance Limited as payment of the premium for a Policy of Insurance. Pursuant to this policy, Specialty Insurance Limited agrees to pay to the donor an amount equal to the difference between the expected annual rate of growth of 6.054% and the actual rate of growth under the investment contract agreement between Specialty Insurance Limited and Trafalgar Trading Limited. The insurance is payable only if the annual rate of growth under the investment contract is less than 6.054% per year.

It is represented that the investment contract and the insurance policy together will generate a minimum of $11,200 in 10 years (thereby paying off the loan advanced to the participants). Based on the leveraged amount a rate of return of 52.96% would be required to accomplish the repayment.

The end result of these transactions is that, in the case of a $10,000 donation:

- The participant is "out-of-pocket" $2,790,
- LLBC issues a donation receipt to the participant for $10,000,
- LLBC receives $100 and an unknown future "revenue-stream", and
- The majority of the funds are transferred to corporations connected to the promoters or returned to the lender (see appendix B).

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Issuing official donation receipts other than in accordance with the Income Tax Act or its regulations

Gifts:

It is our position that LLBC has contravened the *Income Tax Act* by accepting and issuing receipts for transactions that do not qualify as gifts.

No *Animus Donandi*

Under the common law, a gift is a voluntary transfer of property without consideration. However, an additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to generally grow poorer as a result of making the gift.

Our position is the donations received by LLBC from participants are not true gifts under section 118.1 of the ITA. In our view it is clear that the primary motivation of the donor is to profit through the tax credits so obtained through a series of artificial transactions and a minimal monetary investment. It is our view that LLBC was aware, or ought to have been aware, that it was participating in a scheme designed to produce inappropriate tax benefits through an artificial manipulation of the tax incentive.

In support of this position, we note that:

- The promotional material for the Donations Program - Parklane promises the donor will receive a tax credit at the highest marginal tax rate for the combined value of the gifts and provides charts calculating the donors return on cash investment of at least 67% and as high as 94%. Participants in this arrangement, in return for a minimal participation fee, received a "loan" with full and prior knowledge that this loan would never have to be repaid;
- Transactions are pre-arranged, pre-determined and coordinated by the promoters and other pre-arranged third parties. The RCAAA has no interaction or involvement with donors seemingly whatsoever;
- Minimal information is provided to the prospective "donors" as to how the "donations" would benefit LLBC, or to the activities of LLBC they are supporting;
- The donor receives an official donation receipt for the 28% cash contribution and the 72% loan amount of the donation guaranteed by an insurance policy in the 2004 Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities. The donor receives an official donation receipt for the 25% cash contribution and the 75% trust unit value in the 2005 Donations Canada program;

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- LLBC never truly receives the funds "donated". While the funds are deposited temporarily in LLBC's bank account, as a part of participation LLBC is obligated to immediately transfer 99% of the funds deposited to a company directly connected to the promoter;
- The transactions are carefully arranged, as described in appendix A to create the illusion of property being donated to LLBC and invested. In actual fact, these funds followed a circular flow and ended up back in the hands of the lender (minus applicable fees to participants). LLBC received a 1% fee for *its* participation;
- LLBC also received a minimal "investment stream", for its participation in the arrangement.

It is clear that the primary purpose and result of these transactions was to provide the participant a donation tax credit that exceeded the cost of participation. In essence, the arrangement is one whereby the promoters, the RCAAA and the individual donors created the illusion of property, but in reality this involved "purchasing" receipts for a fraction of the receipt's face value (i.e., that the only property involved in the scheme was the participation fee).

As above, the participants "donated" to LLBC with the clear intent to take advantage of the tax system through an artificial series of transactions. LLBC was aware, or ought to have been aware, of the motivations of the participants as it had full access to the promotional materials and information about the scheme in which it participated. In return for a participation fee, the participants secured "loans" which they knew they would never have to repay and donated these to LLBC. LLBC, for its part, issued receipts for the full value of the funds transferred - even though it was obligated to immediately transfer 99% of these funds to an offshore company. In our view, the primary motivation of the donor in these transactions was to profit from the tax system by a combination of the tax credits available for donations and the artificial loan transaction.

In our view these transactions are not true gifts in the sense contemplated by section 118.1 of the ITA. In this regard, these transactions lack the requisite *animus donandi* to be considered gifts. These transactions were, in our opinion, primarily motivated by the donor's intent to enrich him/herself rather than an intent to make a gift to RCAAA. As such, it is our position that RCAAA was not entitled to issue receipts for the property transferred to it.

It is our view that the Association has issued a receipt for a gift or donation otherwise than in accordance with this ITA subsection 118.1, which is cause for revocation by virtue of paragraph 168(1)(d).

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Property donated

Existence of the property:

It is our view that the property represented as being donated is not *actually* property that has been donated to LLBC.

As above, and as detailed in appendix A, the Parklane donation arrangement involved participants themselves contributing a mere 28% of the property purportedly donated to LLBC with the remainder consisting of a loan which is never repaid by the participant. LLBC receives funds but must mandatorily transfer 99% of these to an offshore entity, 93% as an "investment" and 6% as referral fee to which it has no access and receives little, if any, return.

In fact, it appears that these funds are not actually held as investments on behalf of LLBC but the majority of these funds were, in fact, immediately returned to the original lender or paid out as fees to the participant promoters and companies. As such, it is our view that LLBC has issued receipts for property that was not donated to it but that exists as little more than notations on paper as investments "owned" by LLBC. LLBC participated in a scheme that, through a circular series of transactions, was designed to create the illusion of property being donated to LLBC while in actuality the majority of the funds were either consumed by fees to be paid to the participants or returned to the lender.[2]

LLBC's part in this scheme was, as before, to receive funds from "donors", issue tax receipts for the full amount of the property transferred to its bank account, and immediately transfer these amounts received in a bank account off-shore. LLBC had no control over the property "donated" and had no access to the investments. LLBC could not even verify, for the purposes of its own internal audit, the values associated with the offshore investment as indicated in the notes to the financial statements given that the auditors have written down the off-shore account to $1 per agreement. Rather than reasonably seek out prudent investments with the property donated to it, LLBC was obligated to send money to an offshore investment with uncertain and low rates of return.[3]

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[2] See appendix B – paragraphs 24-26 for detailed description

[3] By way of comparison, GIC average rates from 2004 to 2007 as per http://www.bankofcanada.ca were 1 yr: 2.39%, 3yr: 2.74% and 5yr: 3.05% which would have produced a revenue of $1,950,770 at the 1 yr avg. rate or $1,687,859 more than current investment of $262,911. Also, it is interesting to note that the royalty agreements define "contracts" as the S & P 500 and other international stock index futures yet see for example www.streetauthority.com/ma-sample.asp indicates the 5 year average rate of return on the S&P 500 is 11.26% while the royalty agreement has averaged 0.32%.

In our view LLBC participated in a scheme designed to create the illusion of property being donated and issued receipts for property, which was not beneficially transferred to it. LLBC was either aware, or ought to have been aware, of the fact that its role in the arrangement whereby it issued receipts for property which would flow through its accounts but to which it had no present or even future ownership of. The funds that are represented as donated, owned and invested by LLBC were, in fact, circuitously returned to the lender. As such LLBC was not entitled to issue a receipt for the amounts contributed (in this case with reference to the insurance policy and loan or the trust units) and in this regard it is our view that the Association has issued a receipt for a gift or donation otherwise than in accordance with this ITA, which is cause for revocation by virtue of paragraph 168(1)(d).

Nature of the Property:

As above, it is our view that LLBC improperly issued receipts for transactions that were not gifts and for property that it was not, in fact, beneficially entitled to. We are of the view that the offshore investments that LLBC purports to have exist largely only notionally on paper. However, even were we to agree that the gifts were valid gifts to LLBC, and the property held in investments existed, it would still be our view that LLBC issued receipts other than in accordance with the ITA.

As above, the property that was donated to LLBC was immediately transferred to an offshore investment company. Based on our review, there is no indication that the principal amount of this property will ever revert to LLBC. As such, it appears that LLBC is only entitled to a potential "income stream" associated with the property.

In our view, even if we were to accept that the property was validly donated to LLBC (which we do not) it is the income interest in the property, which should have been tax receipted and not the full value of the funds transferred to LLBC. While LLBC does receive certain funds from participants, other than the immediate 1% to which it is entitled, it is *required* to transfer these funds to the offshore investment company. LLBC is never entitled to the property itself but to the income from the property – if there is any. In our view, while it is being represented that the full value of the property is being donated, it is simply a limited income interest in the property that is being donated.

We acknowledge that the restriction on access to the property is a condition of LLBC's participation in the Parklane donations program, and not one *explicitly* set by the donor. However, viewing the "donation" as a pre-arranged transaction, the restrictions so imposed make it clear that it is the income stream, which is donated and to which LLBC is entitled, not the full value of the property. Participants pay a fee to participate in the donation program. The participants have no interaction with LLBC. Participants obtain a loan from a non-arm's length company knowing fully that, provided they follow the instructions, they will not have to repay the "loan". One of the instructions is that they

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transfer these funds to a participating organization. The participating organization is obligated through the agreement to transfer 99% of these funds to the offshore investment company. The participating organization is thereafter entitled to income from the investments (when there is any) but not the principal amount.

As such, it is our view that, were we to accept this as a valid gift of property, due to the nature of the pre-arranged transaction that what has, in fact, been gifted to LLBC would not be the full value of the property temporarily transferred to its account, but the investment income. Furthermore, we are of the view that LLBC was, in fact, fully aware of the nature of said property as management states the following per the notes to the financial statements (2007):

> "The amount of the future benefit is unknown and is dependent on the efficacy of the investment program implemented by Trafalgar. We don't have any liability in the investment program but the potential benefits appear to be significant.
>
> **We don't have any claim to any of the invested funds and the unknown nature of any future benefits prevent us from recording anything except the actual benefit we receive."** *(emphasis added)*

In our view, if LLBC was receiving a donation of an "income stream" from the property, a professional valuator should have valued this income stream and the tax receipts issued accordingly. In this regard, even if the Association had issued a receipt for the valuation amount it would not have been in accordance with proposed subsections 248(31), (32) and (34) regarding limited recourse debts.

It is our view that the Association has issued a receipt for a gift or donation otherwise than in accordance with ITA subsection 110.1 and 118.1, which is cause for revocation by virtue of paragraph 168(1)(d).

Application of proposed subsections 248(31), (32) and (34) regarding limited recourse debts

As above, even if we were of the opinion that the payments made by participants to LLBC constituted "gifts", which, in our view is not the case, in 2003 the Department of Finance introduced new legislation with respect to charitable donations and advantages. These rules allow a taxpayer to make a gift to a RCAAA and receive some advantage in return, however the value on the receipt must reflect the eligible amount of the gift made (i.e., the value of the receipt must reflect the gift less any advantage received by the donor). We would note that, although still proposed, once passed into law, these subsections apply retroactively to the fiscal periods currently under review.[4]

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[4] Subsections 248(31), (32), and (34) apply in respect of gifts made on or after February 19, 2003.

It is our view that the participants each received an advantage, as defined at proposed subsection 248(32), as a result of the cash contribution to LLBC, in the form of receiving a limited-recourse, low-interest debt. A limited-recourse debt is broadly defined to include any unpaid amounts if there is a guarantee, security, or similar indemnity or covenant in respect of the debt. The value of this advantage should have been deducted from the eligible amount of the gift.

It is our view that a limited-recourse debt within the meaning of section 143.2(6.1) was provided to participants in the Parklane donation program and, as such, subsection 248(32) applies to reduce the eligible amount of the gift for income tax purposes. A limited-recourse debt is broadly defined to include any unpaid amounts if there is a guarantee, security, or similar indemnity or covenant in respect of the debt. The value of this advantage should have been deducted from the eligible amount of the gift. In our view, LLBC was aware of this loan, having been provided the promotional materials relating to the program, and accordingly was obligated to reduce the eligible amount of each gift recorded on the tax receipt.

Under proposed subsection 248(34), the taxpayer, if we were to accept that a gift had been made to LLBC, may have been eligible for a tax receipt for payments towards the principal of the loan, but was not entitled to a tax receipt for the *entire* amount purportedly donated.[5] This subsection generally provides that the gift portion of any transaction involving a limited recourse debt is deemed to be no more than the amount of the initial cash payment. A taxpayer may, additionally, claim a gift with respect to a repayment of the principal amount of the limited-recourse debt in the year it is paid. As such LLBC was not entitled to issue a receipt associated with the limited recourse debt (in this case with reference to the promissory note) and in this regard it is our view that LLBC has issued a receipt for a gift or donation otherwise than in accordance with this Act, which is cause for revocation by virtue of paragraph 168(1)(d).

Seriousness of the Offence:

As above, the CRA is greatly concerned about the participation of LLBC in these arrangements. It is the CRA's view that these gifting arrangements provide minimal benefit for the programs of RCAAAs as compared to the values of tax receipts being issued. The *Income Tax Act* provides RCAAAs the privilege of issuing tax receipts to allow them to solicit donations from taxpayers for use in their programs. However, in the case at hand it appears that LLBC participated in a tax shelter arrangement by lending its tax receipting privileges in return for a small percentage of the face value of the receipts so issued. It is interesting to note that since its participation in the program, its issuance of receipts have increased from approximately $52,000 in 2002 to $1 Million in 2003, $12 Million in 2004, $27 Million in 2005 and $43 Million in 2006.

.../10

[5] Again, given the fact that the majority of out-of-pocket funds were paid out to participants and the "loans" were immediately repaid to the lender, it is our view that these transactions were not true gifts to the charity.

We would note, in this regard that the effects of LLBC's participation in this program have resulted in LLBC issuing receipts for $82,965,552 yet actually receiving only $1,092,556 from this "program". In our view, this represents a serious abuse of the RCAAA's receipting privileges.

Furthermore, issuing donation receipts for amounts that are not gifts, or that contain inaccurate values or false information, is a serious offence. In light of the volume of the receipts so issued by LLBC we are of the view that this is cause for the revocation of its registered status.

Examining the overall participation of LLBC at face value in this arrangement, the allocation of the property received, as "donations" would be approximately as follows:

Profit for LLBC	1%
Fundraising fee	6%
Investment	93%
	100%

As above, this situation is compounded by the fact that, based on our review, the majority of funds represented exist as "investments" only notionally on paper as they were used to repay the "lender" in this situation.

Due Diligence:

We note with concern, with respect to this particular issue, that it fully appears that LLBC's directors have demonstrated a complete lack of due diligence with respect to receipting practices. While this is not a ground for revocation itself, it is our view that it is a contributing factor to the aforementioned non-compliance.

Audit Findings:

In our view, the RCAAA was aware that there was considerable uncertainty as to their "investments" in the off-shore accounts but failed to take appropriate measures to safeguard its assets. This includes, but is not limited to not choosing a proper investment strategy consisting of standard investments, failure to take measures to ensure the integrity of the principal portion of the investment, and failure to take steps to verify the legitimacy of the transactions which are reported to the CRA. In this regard we would highlight the following:

- The notes to the financial statement indicate: "We don't have any claim to any of the invested funds and the unknown nature of any future benefits prevents us from recording anything except the actual benefit we received"; (emphasis added).

.../11

- In November, 2004, the president entered into a second contract Series B royalty agreement. A later communiqué indicated that he was aware of significant changes to the contract, which would allow Trafalgar to claw back any trading fees. This was in light of the fact that to date the organization had seen a meagre ROI of .004% ($54,393/$12,958,992);
- The same modifications also scaled back overall benefits; in that LLBC would now only potentially receive 60% of the profits rather than 80%;
- On December 2, 2004, Mr. Shea sent an email to [redacted] which highlights the differences between the 2003 and 2004 Series B investment contracts, in which it is clear he understood that 1) the monthly trading fees could be clawed back at years end from the 20% added to the trading capital, and that 2) LLBC would now receive 20% less of the monthly profits (80% to 60%). He further comments: "Nice for them, not as nice for us."
- In the Executive Committee Meeting minutes of March 19, 2005, it states: "While we have been disappointed in the funds received from the investment contract activity to date, the initial retained one percent has been a welcome addition to our financial position."
- In the Executive Committee Meeting minutes of November 4, 2005, the executive committee recommends continued participation. As stated in the minutes: "Joe Shea reported that the lawyer for Trafalgar opines that the Donations Canada Charitable Giving Program meets the requirements of the CRA, since we receive cash equivalent for the receipts issued. Our organization did not promote or sponsor Trafalgar, and we did not assist in the preparation of or pass judgement on the merits of participation in any aspect of the program. If a subscriber has an adverse consequence (tax deduction disallowed) we just provided the receipt." (emphasis added)
- An email dated June 18, 2007 from [redacted] was sent to [redacted] that stated: "the unit value was arbitrarily set due to many considerations, tax credit to the donor, available funds to use, trading facility capability etc." with regards to the valuation of sub trust units. (empasis added)
- In an email from Mr. Shea dated February 1, 2007, to [redacted] Executive Director he states: "we recognize that we do not have any claim to any of the invested funds pursuant to the terms of the agreement, and in view of the unknown nature of any future benefits we only record the actual benefit we receive in our annual financial statement." "We accepted the Trafalgar and Equigenesis Charitable Donation Programs as presented, fully aware that there would be no stipulated rate of return." (emphasis added)

The failure of LLBC to safeguard donated assets is particularly highlighted by the response to the CRA letter dated November 27, 2008. In reply to the CRA's question 2, LLBC represents " We recognized that what Trafalgar does with the money is not very clear. If the investment fails, we lose the money." In the CRA's view, the failure of LLBC to take an active interest in safeguarding the more than $80 million purportedly donated is extremely troubling.

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The CRA position that LLBC did not perform proper due diligence is further demonstrated in reviewing LLBC's financial statements. Therein we note that LLBC, with respect to its own mutual fund investments, takes a very cautious and prudent investment approach to reduce its portfolio risk as clearly noted in the financial statements when management states: "Management has adopted an approach whereby investments are strategically distributed, on a long-term basis, among several classes of mutual funds to reduce exposure to investment volatility."

Further, it is quite clear that LLBC was fully aware of CRA concerns with respect to tax shelter programs yet chose to participate nonetheless. Despite prior warning that its participation in such programs may be in violation with the ITA, for example causing it to issue receipts for transactions that do not qualify as gifts or for amounts other than reflecting fair-market value, LLBC chose to nonetheless participate. In this regard we note the following:

- In an email from [redacted] (lawyer) to Joe Shea on November 24, 2005, details CRA's position regarding Leveraged Cash Donations and Gifting Trust Arrangements. Mr. Shea forwarded the information and commented: "It looks more and more that the fiscally responsible position for Little League Canada is to not participate in tax shelter schemes beyond straight up cash donations whereby donations are voluntarily made to our organization. I don't want Little League to be seen an organization that would enter into a dubious tax shelter scheme that might be seen in the public eye in an unfavourable manner."
- It is clear from an email from [redacted] dated December 19, 2005, that LLBC was aware of CRA position regarding gifting trust arrangements, yet 2 contracts were signed after this date with the Parklane group.
- [redacted], lawyer for Football Canada, Canadian Lacrosse, Wrestling Canada and Little League Canada, cautioned on continuation of our participation after 2005 because of possible changes in receipting requirements by Revenue Canada. Under the Donations Canada Program, a $2,500 cash donation to Little League Canada and a $7,500 in kind donation (in the form of a beneficial trust in our name) will enable the subscriber to receive a $10,000 charitable donation receipt for income tax purposes. We keep 1% and forward the balance back to Trafalgar for investment under a twenty-year royalty agreement. "It is not clear whether CRA will accept the full $7,500 monetary value attributed to the "in kind" portion. At the end of the day, in theory the full amount, less appropriate fees etc., will come back to us." (emphasis added)

- The final report dated October 27, 2005 from [redacted], tax lawyer at Gowlings, Lafleur, Henderson LLP, which was forwarded to LLBC highlights a number of concerns with the 2005 program as follows. These were subsequently ignored or discounted by LLBC.
    - Opinion that the program had a technical flaw, in that subsection 248(35) of the Act would apply to deem the fair market value of the beneficial interest in the trust to be nil;
    - Concerns that the revised Program "could be considered by a court to be offensive";
    - Concerns that an anti-avoidance provision contained in the section of the Act that deals with leveraged gifts, namely subsection 248(38), would apply;
    - Cautioned that CRA may revoke the status of RCAAAs that participate in leveraged donation programs in light of the new provided provisions in the Act, namely Subsection 248(40) and Subsection 248(41);
    - Advises against participation in the program beyond December 31, 2005;
    - Issues of compliance with the *Trustee Act;*
    - And finally, potential penalties under subsection 188.1(9) for issuing false receipts.
- In the Board of Directors meeting minutes dated November 4, 2006, it is clear that LLBC was aware that CRA position was that the Trafalgar arrangements were a tax avoidance issue as it states: "Trafalgar has been audited for 2003 and they are being audited by CRA as they are trying to build a case showing this is a tax avoidance issue."

Yet, even given all these facts, LLBC continued to participate in the tax shelter arrangement.

It is our view that the RCAAA failed to demonstrate due diligence in verifying the authenticity of the donation program, as well as how participation in the program furthers the objects of the organization. It appears that, as above, the RCAAA has willingly participated in an abusive tax shelter arrangement, in effect, by being paid a small percentage fee for transactions it knew our ought to have known were not gifts to the RCAAA. As above, our audit has determined that the receipts issued by the LLBC are not compliant with the ITA including the changes that were introduced in 2003. Our audit has further revealed that the funds purportedly sent by LLBC to off-shore "investments" were returned to the lender. In our view, LLBC has facilitated this arrangement without concern for the legitimacy of the program or the integrity of its assets as "the initial retained one percent has been a welcome addition to [LLBC's] financial position."

In this regard, it is our view that the LLBC should be revoked as it has issued receipts for a gift or donation otherwise than in accordance with this ITA section 110.1 and 118.1, which is cause for revocation by virtue of paragraphs 168(1)(b) and (d).

.../14

Other Compliance issues:

Books and Records:

Legislation:

Every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing

(a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;
(b) a duplicate of each receipt containing prescribed information for a donation received by it; and
(c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.

Audit Findings:

- The investments and donations from the Trafalgar investment program are not recorded in the books and records;
- The Bank of Montreal and HSBC accounts that were opened solely for the Trafalgar program are not incorporated in the books as answered at the initial interview;
- The donation receipts listings could not be matched to the bank statement or the general ledger;
- The books and records indicate $980,616 as received by Trafalgar yet $1,092,556 was found during the audit for an understated amount of $111,940;
- No bank reconciliations are preformed which should have caught the $2,001,300 variance between deposit and receipted amounts;
- The $7,552,500 donation in kind is not accounted for in the F/S or on the T-2052 in 2006

It is our view that the Association has failed to maintain adequate books and records otherwise than in accordance with ITA 230(2)(a) and (c), which is cause for revocation by virtue of paragraph 168(1)(e).

Conclusion:

If you do not agree with the concerns outlined above, we invite you to submit your written representations **within 30 days from the date of this letter.** After considering the representations submitted by LLBC, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include the issuance of a Notice of Intention to Revoke the registration of LLBC in the manner described in subsection 168(1) of the ITA. Should you choose not to respond, the

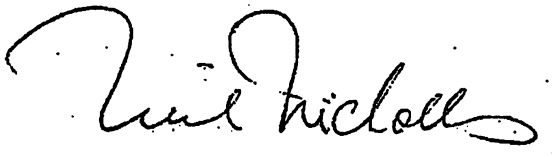
.../15

Director General of the Charities Directorate may proceed with the issuance of a Notice of Intention to Revoke the registration of LLBC in the manner described in subsection 168(1) of the ITA.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing us to discuss your file with that individual.

If you require further information, clarification, or assistance, I may be reached at (613) 957-2174 or by facsimile at (613) 946-7646.

Yours sincerely,



Neil Nicholls
Auditor
Compliance Section
Charities Directorate

Enclosure

APPENDIX "A"

Tax Shelter/Scheme Descriptions:

Trafalgar Donations Program - 2004

The donor contributes $279 per $1,000 of donation. This contribution covers arrangement fees and pre-payment of loan interest.

The donor incurs a loan. The amount of the loan is $1,120 per $1,000 of donation.

The donor does not make payments on the loan. Consequently, for a cash payment for $279, the donor receives a donation tax-receipt for $1,000.

Equigenesis – 2004

The donor acquires one unit of a limited partnership for $2,300 cash and $15,000 borrowed from a trust. The donor also pays a loan arrangement fee for $125, for a total cost of $17,425.

In addition, the donor pays cash $1,100 and obtains a loan for $8,900. Including a donation loan arrangement fee of $25, this amount to a cost of $10,025. The donor receives a donation receipt for $10,000.

Therefore, for an aggregate gift of $3,400, the donor receives a donation tax-receipt for $10,000. The donor does not make payments on the loans.

Appendix "B"

2004 Donation Program Supporting Canadian Amateur Athletics Foundations and Charities ("Donation Program") (Tax Shelter #TS069260)

Registration as a Tax Shelter

1. A T5001 Application for Tax Shelter Number was submitted to Canada Revenue Agency in respect of the above Donation Program by the promoter on Jan. 9, 2004. A tax shelter number was assigned by CRA. The promoter was named on the application form as 1602628 Ontario Inc., of Burlington, Ontario. A corporation at the same address, ParkLane Financial Group Limited ("ParkLane Financial"), along with another company there, Trafalgar Associates Limited, carry out the promoter functions. The shareholder of the latter two companies as of the end of 2004 was Trafalgar Securities Limited of Bermuda. The controlling shareholder of the numbered company is the Canadian president of all three companies.

2. ParkLane Financial markets the Donation Program to financial advisors and other advisors in Canada.

Signing Documents and Procedure for Signing Up

3. A donor contributed his own funds to Aylesworth Thompson Phelan O'Brien LLP, In Trust ("Aylesworth") of $279.00 per $1,000 of donation. Per the promotional literature this $279 per thousand was "with regard to an arrangement fee and pre-payment of loan interest".

4. A donor completed a Loan Application and Power of Attorney in favour of Plaza Capital Corporation ("Plaza Capital"), the lender, located in Canada. The amount of the loan was $1,120 per $1,000 donation.

5. A donor completed a "Promissory Note" in favour of Plaza Capital due in 10 years in the amount of $1,120 per $1,000 donation.

6. A donor completed a Pledge, indicating an intention to make a donation in favour of a particular registered charity or charities ("the charity") pledging $1,000 per $1,000 donation. (This charity could include a registered Canadian amateur athletic association.)

7. A donor completed a Direction to Aylesworth, directing $1,000 per $1,000 donation to the RCAAA, and $365.40 per $1,000 to Specialty Insurance Limited ("Specialty Insurance"), and $33.60 per $1,000 to Plaza Capital.

8. A donor completed a Donor Declaration Letter. Point 5 says:
I understand that the Insurance Contract (the "Insurance") issued by an insurance company (the "Insurance Company") in respect of the Program is optional and that I could have declined coverage of Insurance by sending written notice to that effect to ParkLane Financial Group Limited. I hereby confirm and agree to an allocation of the fee payable to the Insurance Company towards the purchase of Insurance.

9. The $279.00 "with regard to an arrangement fee and pre-payment of loan interest" consisted of $33.60 for one year's prepaid interest, and $245.40 as the donors' unfinanced portion of their arrangement fee. The total arrangement fee was $365.40 per $1,000 donation.

10. The donors' $279 contribution above included $33.60 of prepaid interest at 3% which was the rate prescribed by CRA.

11. The total arrangement fee of $365.40 consists of the amount to be paid to Specialty Insurance in Bermuda for:

an insurance policy	$115.00 per $1,000 donation
an investment contract	240.00 per $1,0000 donation
administrative fee	10.40 per $1,000 donation
	$365.40 per $1,000 donation

12. A donor completed a Direction to Plaza Capital, directing the loan proceeds of $1,120 per $1,000 donation to be paid to Aylesworth.

Contracts Received by Donor

13. A donor received a document entitled "Policy of Insurance" in which the donor is the "Policyholder/Insured". Specialty Insurance is the sole issuer of this Policy of Insurance and is guarantor of any and all provisions contained therein. The insurance provided is described as being for the purpose of providing the donor (the Insured) with a certain rate of growth from "The Trafalgar Global Index Futures Program" ("TGIFP") agreement attached to the Policy of Insurance. The donor is to receive, as insurance, a payment at the end of 10 years, representing the difference between the expected rate of growth of 6.04% and the actual rate of growth under this agreement. The amount shown as the premium paid for this policy is $115.00 per $1,000 donation.

14. The TGIFP agreement is between Trafalgar Trading and Specialty Insurance, for the donors' benefit. Specialty Insurance is to receive, on the donors' behalf, a profit distribution from Trafalgar Trading at the end of 10 years. The cost of this TGIFP investment, provided by the donor, was $240 per $1,000 donation, being part of their arrangement fee of $365.40 per $1,000 donation. A donor directed Aylesworth to pay this $365.40 to Specialty Insurance.

Source and Uses of Funds

15. The sources of funds per $1,000 donation were:

Amount borrowed from Plaza	$1,120.00
Amount contributed by donor	279.00
Total Sources of Funds	$1,399.00

16. The donors' uses of funds per $1,000 donation were:

Payment directed to RCAAA		$1,000.00
One year of prepaid loan interest		33.60
Payment directed by donor to Specialty Insurance but re-directed to Trafalgar Trading pertaining to:		
Investment Contract with Trafalgar Trading	240.00	
Loan or other amount from Specialty Insurance	115.00	
Fee charged by Specialty Insurance	.40	355.40
Payment actually received by Specialty Insurance		10.00
Total Uses of Funds		$1,399.00

Source of Funds for the Donor Loan

17. An executive of a commercial lending corporation was approached to provide funding for this donation program. A separate financing corporation (located in Canada) was set up to assemble funds from various investors.

18. Plaza Capital Finance Corporation ("Plaza Capital Finance"), a sister company of Plaza Capital, and also located in Canada, borrowed these funds from the financing corporation, as documented by a Promissory Note issued by Plaza Capital Finance to that corporation. These funds were transferred directly by the financing corporation to Aylesworth.

19. A donor obtained his loan from Plaza Capital, as documented by a Promissory Note issued by the donor to Plaza Capital. This Promissory Note was assigned to Plaza Capital Finance.

Flow of Funds pertaining to Donations Claimed by the Donor

20. Per Direction from the donor, Aylesworth issued a cheque to the RCAAA, which received the full amount of the funds, which the donor pledged. The RCAAA deposited these cheques into its bank account.

21. A donation receipt was issued after year-end by the RCAAA to the donors in an amount corresponding to the amount deposited by the RCAAA.

22. Per Direction from the RCAAA to its bank, the bank made an immediate payment of 99% of the total donated funds to the bank account of Trafalgar Trading in respect of the Royalty Agreement Purchase Price and Referral Fee. From this payment, Trafalgar Trading Limited directs an amount equal to approximately 6% of the amount received by the RCAAA from its account to Parklane Financial for a donation referral fee used to pay referrers of the donors to the program. The RCAAA retained 1% of the donation amounts received by it.

23. As seen above, the RCAAA paid 93% (99% less 6%) directed to Trafalgar Trading purportedly as the purchase price of a "2004 Series A Royalty Agreement". However, as explained in more detail at Fact 24 below, Trafalgar Trading had to use these, or other funds, to repay the financing corporation $1,125.60 per $1,120 of loan amount. The RCAAA's royalty agreement with Trafalgar is to earn for the RCAAA revenue over 20 years through the use of Trafalgar Trading's use of Trading Software to trade S&P 500 and other international stock futures contracts. Trafalgar Trading issued monthly statements to the RCAAA showing the investment's performance, after deduction of the monthly trading fee. Actual cheques were issued to the your RCAAA for months when there was a net profit due to you. The amounts of these cheques issued to the RCAAA in calendar 2005 totaled less than 2.5% of the amount paid to Trafalgar Trading by the RCAAA for the investment in their "2004 Series A Royalty Agreement". In calendar 2006 such cheques issued to RCAAA were less than 2.0% of this amount.

Flow of Funds pertaining to Arrangement Fees

24. Per the donors' Direction at Fact 7 above, the $365.40 per $1,000, which was paid to Aylesworth, was then to be sent to Specialty Insurance. However, Specialty Insurance issued a Direction to Aylesworth directing Aylesworth to pay Specialty Insurance only 1% of the donation amount, and to pay the balance to Trafalgar Trading. Hence Trafalgar Trading received $355.40 per $1,000 donation while Specialty Insurance received $10.00 per this $1,000.

Repayment to the Financing Corporation

25. Trafalgar Trading immediately made a payment to the financing corporation equal to the funds that the financing corporation loaned earlier in the day to Plaza Capital Finance (which were provided directly to Aylesworth). This represented a repayment of $1,120 per $1,000 of donation. In addition, a fee of 0.5% to the financing corporation was included, for a repayment of $1,125.60 for each $1,120 provided earlier in the day.

26. To pay for this $1,125.60 (per 1,000 of donation) to the financing corporation, Trafalgar Trading had funds available to it from the Donation Program from two sources. These were:

Amount provided by the charities after Trafalgar Trading paid the 6% referral fee ($990 - $60)	$930.00
Amount from Specialty Insurance being $355.40 (being $365.40 less $10 retained by Specialty)	355.40
Sources of funds available to repay the financing company	1,285.40
Less: Repayment to the financing company -	1,125.60
Balance of funds from the Donation Program available for both Total investments of the donor and the RCAAA	$159.80

27. ***Sources and Uses of Funds from the Donation Program***

The only funds that were injected into the Donation Program for longer than one day were the $279 cash per $1,000 of donation. This $279 could be considered to have been used as follows:

Amount of taxpayer's own funds contributed per $1,000 of donation		$279.00
Deduct: Uses of funds per $1,000 of donation:		
(a) One year's prepaid interest on taxpayer loan of $1,120 at 3%	$33.60	
(b) Amount of donation that the RCAAA was permitted to retain	10.00	
(c) Donation referral fee paid to party who referred the taxpayer	60.00	
(d) Amount that Specialty Insurance actually received for its services	10.00	
(e) Fee paid to the finance corporation for providing loan for 1 day	5.60	$119.20
Remaining portion of their contribution available for investment		$159.80

Donor Assignment of their Promissory Note and Release from their Obligations

28. The donors were to request from Plaza Capital Finance that they assign their Promissory Note to Trafalgar Trading and that Trafalgar Trading accept assignment of their insurance policy and investment contract in return for their release from their obligation under their Promissory Note. An Assignment Agreement was signed at the time of the donors' request, and the donor would have been then issued a Release by Trafalgar Trading.

The donor Promissory Note was assigned and the donor Release form was issued some time between May 2005 and June 2006.